

III. BACKGROUND

A. The Solicitation

On April 7, 2009, the Centers for Disease Control and Prevention, Procurements and Grants Office, in Atlanta, Georgia (CDC), issued the subject solicitation for support services for the National Prevention Information Network. The Contracting Officer (CO) set the procurement totally aside for small businesses, and designated North American Industry Classification System (NAICS) code 519130, Internet Publishing and Broadcasting and Web Search Portals, with a corresponding 500 employee size standard, as the NAICS code for this procurement. Offers were due May 7, 2009.

B. The Statement of Work (SOW)

The National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Disease (STD), and Tuberculosis (TB) Prevention (NCHHSTP) is part of the Centers for Disease Control and Prevention (CDC), an agency of the U.S. Department of Health and Human Services (HHS). The National Prevention Information Network (NPIN) is NCHHSTP's primary mechanism for supporting network partnerships. NPIN is a comprehensive web-based source of information and resources targeted to professionals dedicated to the prevention of HIV, viral hepatitis, STDs, and TB. The purpose of this procurement is to provide services for the NPIN program. There will be one contract award, but the procurement is in two parts, a "core" portion and "task orders." The "core" portion consists of four "domains" or task types; the "task orders" portion consists of these four and two others. The SOW describes work requirements within each domain as follows:

1. Networking. Operate, maintain, and enhance the existing website whose current features include five searchable databases (Resources and Services, CDC NPIN Inventory, Funding Opportunities, Conference Calendar, and CDC HIV/STD/TB Prevention News Update), topical content with links to other materials, electronic mailing lists (listservs) and other customized information transfer features, web communities, topic-specific "microsites," RSS feeds, special "splash pages" and webcasting capabilities. Make recommendations to enhance interactivity and to capitalize on web 2.0 tactics and user-generated content. Monitor use of information on website, update to ensure data and links are accurate, and recommend removal of outdated items. Convert documents, materials, images, audio, and video into web-appropriate formats, including streaming video. Achieve and maintain high visibility for website using internet search engines.

Review and recommend enhancements to three associated websites, including one in Spanish. Review each database for usefulness and reconstruct to be relevant to current customer needs, taking advantage of the latest technology in web design and search strategy. Ensure adequate capacity to accommodate these records and provide access. Ensure all content meets Section 508 Compliance requirements. Add new records to databases daily and thoroughly update and verify yearly.

2. Education. Develop and maintain the inventory database for electronic distribution of materials, and add approximately 100 CDC and 50 grantee-produced materials to the inventory each year. Create and audience-test approximately five special materials such as fact sheets and 1- to 5-page brochures per year.

3. Community and Stakeholder Mobilization. Develop marketing and outreach plan to increase awareness and use of NPIN services by CDC employees, partners, and stakeholders. Attend key conferences. Develop and maintain mailing lists for key target audiences and stakeholders. Support stakeholder communication efforts using NPIN channels (e-mail, listserv, website highlights, etc.), electronic distribution of Dear Colleague letters and announcements. Track and analyze stakeholder communication, and support stakeholder events. Develop and maintain four existing and four new web communities per year, five existing and five new electronic mailing lists per year, and three collaborative work environments per year. Provide technical assistance and support for some ten national observances or special awareness events per year including development and implementation of web 2.0 outreach tactics. Develop and deliver Director's Connections e-newsletters and annual reports.

4. Capacity Building. Establish and operate reference and referral services providing access to NPIN information, provide technical assistance, training and marketing to target audiences on how to access this information through the website (the primary access point) and other points of access. Log and respond to requests for information. Train information specialists and provide interactive access to them through Live Chat on the website, email, telephone, fax, and TTY. Maintain Spanish language capacity. Provide in-person and web-based training and technical assistance in using the NPIN website and other products.

5. System Monitoring. Track and evaluate program services, including the development of evaluation plans and systems to monitor user experience. Review monitoring plans for similar services and, after approval, develop and implement program enhancements.

6. Knowledge into Action. Research, identify, and develop best practices and emerging trends in information resource and knowledge management. After approval, plan and implement these state-of-the-art approaches.

C. Amendment 2

On April 29, 2009, the CO issued Amendment 2. This amendment answered questions, made some minor changes to the Solicitation, and extended the due date for proposals to May 14, 2009. In response to a question as to the inventory of reports the contractor would have to manage, the CO replied that the contractor would not be responsible for distributing printed materials, but for making documents available for downloading off the website. Any requests for hard copies of documents would go, not to the contractor, but to the CDC's information center.

D. The Appeal

On, April 16, 2009, Information Ventures, Inc. (Appellant), filed the instant NAICS code appeal with the Small Business Administration (SBA) Office of Hearings and Appeals (OHA),

challenging the CO's NAICS code designation. Appellant asserts that the appropriate designation is NAICS code 561990, All Other Support Services, with a corresponding \$7 million annual receipts size standard.

Appellant argues that the primary purpose of the procurement is not Internet publishing or web site maintenance, but the provision of day-to-day business and other organizational support services to enable the CDC's NCHHSTP to support its prevention partners, stakeholders and other constituents.

Appellant asserts that while the contractor will operate and maintain an existing Internet presence and maintain and support a web site, the bulk of the work here is to provide day-to-day business and other organizational support services. The contractor is required to maintain a website, and to perform scientific, technical and operational services. The contractor must also produce and maintain diverse resource materials such as databases, mailing lists, telephone protocols, etc.

Appellant asserts the RFP requires a full-time project director who will manage the contract. The RFP also provides for key personnel who are to demonstrate appropriate experience with prevention of HIV/AIDS, viral hepatitis, sexually transmitted diseases and tuberculosis.

Appellant asserts this procurement thus requires not merely personnel experienced in information technology, but also in medicine, and the real function of the procurement is not web site maintenance, but providing administrative support services. Accordingly, NAICS code 561990 is the appropriate code for this procurement.

E. Responses to the Appeal

1. The CO's Response

On April 27, 2009, the CO responded to the appeal. The CO asserts Appellant has ignored the thrust of the solicitation. The primary purpose of the procurement is to obtain contractor support for the operation of the CDC NPIN Website, which serves as the primary access point to obtain CDC NPIN resources and information on infectious diseases such as HIV, viral hepatitis, STDs, and TB.

The CO relies on the SOW to support his argument. The SOW requires the contractor to operate and maintain a web site and an existing Internet presence, and to connect NCHHSTP stakeholders and partners with interactive features, such as web communities, discussion boards, blogs. The web site is to be the primary access point to CDC NPIN resources and services. The web site is to include access to databases that provide information about prevention services, resources and materials.

The contractor is responsible for monitoring use of existing information elements on the website. The support for the website includes, but is not limited to, maintenance and operation of the website; conversion of documents, materials, images, audio or video into web-appropriate

formats; achieving and maintaining high visibility for the site utilizing search engines; and ensures that newly added content is appropriately cleared by the CDC.

The contractor is also make recommendations on enhancing the Spanish version, and be prepared to maintain two additional specialized websites. The contractor will maintain a database application that supports the website. The contractor must support electronic mailing lists, develop and maintain web communities.

The additional tasks required of the contractor are also tied to the website. The CO maintains that his original designation is correct.

2. Danya International's Response

Also on April 27, 2009, Danya International, Inc. (Danya), the incumbent contractor, filed a response to the appeal. Danya argues the solicitation places a clear and overriding emphasis on Internet based solutions across all of the tasks specified in the Scope of Work.

The first task, Networking, is solely an Internet web based solution and the centerpiece of all other tasks. This is also true of the tasks for Education, Community and Stakeholder Mobilization, and Systems Monitoring. The task Capacity Building calls for building access to the web site. Finally, the sixth task, Knowledge into Action, requires incorporation of best and promising practices in emerging technologies and state of the art approaches, and is necessarily Internet based.

Danya further argues that the illustrative businesses the *NAICS Manual* lists for the 519130 NAICS code selected by the CO include web search portals, Internet search portals and Web communities, all of which require work similar to that required by this procurement. Conversely, illustrative businesses for NAICS code 519130, include businesses such as auctioneers, bartering services, and document shredding services, which are unrelated to the work required in this procurement.

Danya argues that the overriding and principal purpose of this contract is to operate and maintain the NPIN Internet presence, to publish information about certain diseases on the Internet, and to connect stakeholders and partners through the NPIN web search portal. For this, the CO's designated NAICS codes is the appropriate code.

IV. Discussion

Appellant filed the instant appeal within 10 days after the CDC issued the solicitation. Thus, the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1); 134.304(a)(3).

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, it must prove the CO's NAICS code designation is based on a clear error of fact or law. *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003); 13 C.F.R. § 134.314. The correct NAICS code is that which best describes the principal purpose of the

services being procured, in light of the industry description in the *NAICS Manual*¹, the description in the solicitation, and the relative weight of each element in the solicitation. *Durodyne*, SBA No. NAICS-4536, at 4; 13 C.F.R. § 121.402(b).

The NAICS code designated by the CO, 519130, Internet Publishing and Broadcasting and Web Search Portals, covers:

[E]stablishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.

Illustrative Examples:

- Internet book publishers
- Internet sports sites
- Internet entertainment sites
- Internet video broadcast sites
- Internet game sites
- Internet news publishers
- Internet periodical publishers
- Internet radio stations
- Internet search portals
- Web search portals
- Internet search Web sites

NAICS Manual, at 678.

Appellant's requested NAICS code, 561990, All Other Support Services, covers:

[E]stablishments primarily engaged in providing day-to-day business and other organizational support services (except office administrative services, facilities support services, employment services, business support services, travel arrangement and reservation services, security and investigation services, services to buildings and other structures, packaging and labeling services, and convention and trade show organizing services).

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States (2007)*, available at <http://www.census.gov>.

Illustrative Examples:

Bartering services
Flagging (i.e., traffic control) services
Bottle exchanges
Float decorating services
Cloth cutting, bolting, or winding for the trade
Inventory taking services
Contract meter reading services
Lumber grading services
Diving services on a contract or fee basis

NAICS Manual, at 788-89.

A review of the SOW here establishes that the primary purpose of this procurement is the operation of the NPIN web site. There will be a great deal of information published on the site. Further, the site will be used to set up web communities and enhance networking and the exchange of information among parties interested in the medical issues discussed. The contractor will set up new web communities. Materials will be electronically distributed. The marketing and outreach requirements of the procurement are all designed to increase awareness and use of the web site. Any activity required by this solicitation which is not strictly Internet related is designed to support and enhance public awareness of the website. All of the contractor's interaction with the public and distribution of information will be through the website. The contractor will not even be providing printed hard copies of the material on the web site. Anyone who wishes to obtain a printed copy of any of the documents on the website must go, not the contractor on this procurement, but directly to the CDC itself.

It is thus clear that the tasks in this contract are in line with those covered by NAICS code 519130, such as Internet search web sites and Internet publishing. The *NAICS Manual* description refers to publishing content on the Internet exclusively, and this Office has held that the code is narrowly tailored to Internet publishing. *NAICS Appeal of JBS International, Inc.*, SBA No. NAICS-5021 (2008). This contract meets the description of NAICS code 519130, as it is narrowly tailored to the operation of the website, with any ancillary tasks being in support of that web site. Even the publishing of hard copies of documents on the site is outside the scope of the contract.

Conversely, Appellant's preferred NAICS code covers day-to-day business support services, and the covered industries chosen as illustrative examples, traffic control, lumber grading, cloth cutting, simply have no relation whatever to the tasks required by this solicitation.

Accordingly, I find that Appellant has failed to meet its burden of establishing clear error in the CO's NAICS code designation. Rather, the tasks required by this procurement fall squarely within the NAICS code 519130, Internet Publishing and Broadcasting and Web Search Portals, and that is the correct NAICS code for this procurement.

V. Conclusion

For the above reasons, the instant appeal is DENIED, and the CO's NAICS code designation is AFFIRMED. The correct NAICS code designation for this procurement is 519130, Internet Publishing and Broadcasting and Web Search Portals.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge